

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 2 - EFFECT OF NON-COMPLIANCE

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Non-compliance with Rules (O. 2, r. 1)

(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

~~(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an originating process other than the one employed.~~

Rule 11
Rec 10-16

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings ought to have begun by an originating process other than the one employed, but shall instead give directions for the continuation of the proceedings in an appropriate manner.

2. Application to set aside for irregularity (O. 2, r. 2)

(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

Remarks

(2) An application under this rule may be made by summons ~~or motion~~ and the grounds of objection must be stated in the summons ~~or notice of motion~~.
(Enacted 1988)

Rule 12
Rec 10 to 16

3. Non-compliance with pre-action protocol, practice direction, etc.
(O. 2, r. 3)

Rule 3
Rec 7-9, 84

(1) Where the Court exercises any of its powers under these rules or gives any direction, it may take into account whether or not a party has complied with any relevant pre-action protocol.

(2) The Court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule, practice direction or relevant pre-action protocol.

(3) When exercising its power under paragraph (2), the Court shall have regard to –

- (a) the amount in dispute; and**
- (b) the costs which the parties have incurred or which they may incur.**

(4) Where a party pays money into court following an order under paragraph (2), the money is security for any sum payable by that party to any other party in the proceedings.

4. Sanctions have effect unless defaulting party obtains relief (O. 2, r. 4)

Rule 3
Rec 7-9, 84

Where a party has failed to comply with a rule, practice direction, court order or pre-action protocol, any sanction for failure to comply imposed by the rule, practice direction, court order or pre-action protocol has effect unless the party in default applies for and obtains relief from the sanction.

5. Relief from sanctions (O. 2, r. 5)

Rule 3
Rec 7-9, 84

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction, court order or pre-action protocol, the Court shall consider all the circumstances including –

- (a) the interests of the administration of justice;**
- (b) whether the application for relief has been made promptly;**
- (c) whether the failure to comply was intentional;**
- (d) whether there is a good explanation for the failure;**
- (e) the extent to which the party in default has complied with other rules, practice directions, court orders and pre-action protocols;**
- (f) whether the failure to comply was caused by the party or his legal representative;**
- (g) in the case where the party in default is not legally represented, whether he was unaware of the rule, practice direction, court order**

Remarks

or pre-action protocol, or if he was aware of it, whether he was able to comply with it without legal assistance;

(h) whether the trial date or the likely trial date can still be met if relief is granted;

(i) the effect which the failure to comply had on each party; and

(j) the effect which the granting of relief would have on each party.

(2) An application for relief must be supported by evidence.

6. Transitional provision relating to rule 12 of Amendment Rules 2007 (O. 2, r. 6)

Rule 13
Rec 10-16

Where, immediately before the commencement of rule 12 ("the amending rule") of the Amendment Rules 2007, an application by motion made under rule 2(2) as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made.